



**COMMONWEALTH OF VIRGINIA
VIRGINIA INFORMATION TECHNOLOGIES AGENCY**

TELEPHONE AUDITING SERVICES

DATE: July 6, 2006

CONTRACT #: VA-030804-ASCB

VENDOR: Asyncrob and Associates
3001 Mission Square Drive
Fairfax, VA 22031

FIN: 54-2044408

CONTACT PERSON: James Robinson
PHONE: 703-591-6455

TERM: August 4, 2006 – August 3, 2007

DELIVERY: 30 Days

FOB: Destination

PAYMENT: Net 30 Days

For Additional Contract Information:

Virginia Information Technologies Agency
Supply Chain Management Division

Doug Crenshaw
Technical Sourcing Manager
Phone: 804-371-5993
E-Mail: doug.crenshaw@vita.virginia.gov
Fax: 804-371-5969

**NOTES: ALL TELECOMMUNICATIONS SERVICES MUST BE OBTAINED THROUGH VITA
UNLESS A WAIVER IS OBTAINED.**

Individual Commonwealth of Virginia employees are not authorized to purchase services for their personal use from this contract.

CONTRACT # VA-030804-ASCB
CONTRACT CHANGE LOG

[illegible]

**MODIFICATION #3
TO
CONTRACT NUMBER VA-030804-ASCB
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ASYNCR0B & ASSOCIATES**

This MODIFICATION #2 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth", and Asyncrob & Associates, hereinafter referred to as "Contractor".

Reference Contract VA-030804-ASCB, Page 12, Paragraph 34 entitled "Term"

Both above-referenced parties do hereby agree to extend the term of the Agreement from August 4, 2006 through August 4, 2007.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE
TERMS AND CONDITIONS OF THE CONTRACT.**

ASYNCR0B & ASSOCIATES

COMMONWEALTH OF VIRGINIA

BY: 

BY: 

NAME: JAMES E ROBINSON

NAME: Dory Crenshaw

TITLE: CEO

TITLE: Strategic Sourcing Manager

DATE: 28 JUNE 06

DATE: 7-5-06

**MODIFICATION # 2
TO
CONTRACT NUMBER VA-030804-ASCB
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ASYNCR0B & ASSOCIATES**

This MODIFICATION #2 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and ASYNCR0B & Associates, hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #2 is hereby incorporated into and made an integral part of Contract VA-030804-ASCB, as modified.

Reference: Page C-9 of C-16, Paragraph 27, entitled "Term":

Both above referenced parties hereby agree to extend the term of Contract VA-030804-ASCB, as specified in the above reference, from August 5, 2005 through August 4, 2006.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030804-ASCB and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE
TERMS AND CONDITIONS OF THE CONTRACT.**

ASYNCR0B & ASSOCIATES

BY: 

NAME: James E Robinson IV

TITLE: CEO

DATE: June 2, 2005

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Tech Contracts Manager

DATE: _____

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Asyncrob Corporation

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**MODIFICATION # 1
TO
CONTRACT NUMBER VA-030804-ASCB
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
ASYNCR0B & ASSOCIATES**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and ASYNCR0B & Associates, hereinafter referred to as "Contractor" relating to the modification of the above contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-030804-ASCB, as modified.

Reference: Page C-5 of C-16, Paragraph 13, entitled "Changes to the Contract":

Both of the above-referenced parties agree to delete the first Paragraph in 4.b. on Page 5 of 10 of the Schedule, IFB #03-034 in its entirety and replace it with the following paragraph:

"For each "Category 1" facility or service, the Contractor will be paid ^{99P} by a specified percentage of any overpayments made by the Authorized User that the Contractor identifies as DIT billing or ordering errors. The Contractor will be paid a specified percentage of any overpayments made by the Authorized User that the Contractor identifies as a result of billing or ordering errors on the part of telecommunication vendors. These overpayments must be received back from the telecommunications vendor in order for the contractor and Authorized User to receive payment. In addition, the Contractor will be paid by the Authorized User for a specific percentage of any future savings (for a specified period of time) that it identifies as a result of the customer disconnecting or modifying its obsolete or unused facility or service. Specifically:"

Both of the above-referenced parties further agree to delete Paragraphs 4.b.(2) and (3) in their entirety and replace with the following paragraphs:

"4. b. (2) If proven valid, an Authorized User credit request will be honored back to the date that the telecommunications vendor error occurred, but in no instance shall the credit be provided by DIT to an Authorized User for a period of more than thirty-six (36) months. The Contractor shall receive 16.85% of the credit from the Authorized User."

"4. b. (3) If proven valid, an Authorized User credit request will be honored back to the date that the DIT error occurred, but in no instance shall the credit be provided by DIT to an Authorized User for a period of more than the current fiscal year. The Contractor shall receive 20% of the credit from the Authorized User."

Both of the above-referenced parties further agree to add Paragraph 4.b.(9):

"4. b. (9) If recommended changes from the Contractor for future saving are implemented, Contractor will be entitled to payments of 16.85% of the future monthly savings for three (3) months. Payments will be made by authorized users to Contractor."

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-030804-ASCB and cannot be modified, except by a writing signed by duly authorized representatives of both parties.

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Asyncrob Corporation

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ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

ASYNCR0B & AssociatesBY: NAME: James E Robinson IVTITLE: CEODATE: 16 February 2004COMMONWEALTH OF VIRGINIABY: NAME: Joe A. ParrTITLE: Tech Contracts ManagerDATE: 2/17/04

SOLICITATION, OFFER AND AWARD
DATA PROCESSING / TELECOMMUNICATIONS

FIN:

54-2044408

1. Contract No:	2. IFB No:	3. Date Issued:	Date Due:	4. APR	5. Approval No:
VA-030804-ASCB	2003-034	Jun 18, 2003	Jul 9, 2003	224	A-23

For Information Call: David Butler (804) 371-5521

6. ISSUING OFFICE:

Department of Information Technology
Acquisition Services Division
110 S. 7th Street, Lobby Floor
Richmond, Va. 23219-9300
ATTN: Bid Section

7. SHIP TO:

Dept. of Information Technology
Attn: Stuart Thacker
110 South 7th Street
1st Floor
Richmond, VA 23219-3931

SOLICITATION

8. Sealed bid(s) for furnishing the Products and Services set forth in the schedule, will be returned to the Issuing Office identified in block 6 above. Please provide an original and 0 copies. If hand carried, deliver to the ASD receptionist located on the Lobby Floor of the address listed in Block 6. Bids must be received prior to 2:00 p.m. local time Jul 9, 2003.

CAUTION - LATE OFFERS: See Paragraph 3 of the Solicitation Instructions

This is an advertised solicitation which consists of (1) the schedule of Products and Services, pages 2 thru 10; (2) the solicitation instructions pages S-1 thru S-3; (3) The Contract Terms and Conditions page C-1 thru C-16; and (4) other provisions, representations, certifications or specifications as are attached or incorporated herein by reference.

Offers will be publicly opened at: 2:10 p.m. local time Jul 9, 2003, in the ASD Conference Room, 110 South 7th Street, Lobby Floor.

All offers are subject to the terms and conditions set forth in the above referenced sections of this solicitation.

Douglas Wilson, Director
Acquisition Services

Signature

OFFER

In compliance with the terms and conditions set forth in the solicitation, the undersigned agrees, if this offer is accepted within 90 calendar days from the date of receipt of offers, to furnish any or all items awarded at the prices offered in the schedule, delivered to the address in block 7, within the time specified in the schedule.

9. CONTRACTOR:

Company Name: ASYNCROB & ASSOC
Address: 3001 MISSION ST DR
City, State: FAIR FAX, VA
Signature: [Signature]
Name (Typed): JAMES E ROBINSON IV
Title: CEO
Phone: 703 591-6455

10. BILL TO:

Dept. of Information Technology
Attn: Accounts Payable
110 South 7th Street
3rd Floor
Richmond, VA 23219-3931

AWARD

11. Accepted as to Item Numbers: 12. Amount: 13. Award Date:

all

Per Order

8-4-03

14. Name of Contracting Officer:

Jeff Davis
Contracts Manager

15. COMMONWEALTH OF VIRGINIA

PAGES:

By:

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NAME OF CONTRACTOR			REQUIRED DELIVERY DATE:		INITIALS		
			(RDD) 30 DAYS ARO				
ITEM NO	DESCRIPTION	QTY	UNIT	UNIT PRICE	EXTEND PRICE		
	<p>The Virginia Department of Information Technology (DIT) desires to establish a statewide master contract with a qualified Vendor experienced in providing telephone auditing services in a governmental setting:</p> <p>1. Percentage of credits for past billing errors and future savings charged by Vendor for conducting these audits as delineated in this solicitation.</p> <p>NOTE: Percentages quoted must include the "IFA" as defined in the terms and conditions.</p>		%	16.85			

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NAME OF CONTRACTOR	REQUIRED DELIVERY DATE:	INITIALS	
	(RDD) 30 DAYS ARO		

1. The Department of Information Technology (DIT) is soliciting bids from responsive and responsible Bidders to establish a statewide contract to provide telecommunications physical inventory services on an agency-by-agency basis in a governmental setting. For the purposes of this Contract, "Authorized User" is hereby defined as state agencies, institutions and other public bodies as defined in Section 2.2-4301 of the Virginia Public Procurement Act (VPPA) and any entity that currently utilizes any of DIT's services.

The Commonwealth recognizes that, for a number of reasons, records of DIT customer agencies (authorized users) of its voice facilities may not always be accurately or currently maintained, and as such, could be paying for facilities that it physically no longer maintains or utilizes. The objective of this contract is for the Contractor to:

- a. Conduct a physical inventory of telephone (voice) telecommunications facilities/features for a specific state agency, and compare it with the detailed vendor billing to determine any potential erroneous billing;
- b. Perform an on-site verification that the billed facilities and features are operational; and
- c. Identify any obsolete facilities/equipment which can be disconnected, thereby providing future savings to the customer entity (authorized user).

The Contractor will be compensated by the authorized user solely out of the credits that they receive from erroneous billings detected by the Contractor and future savings recommended by the Contractor that the authorized user actually implemented. This contract covers only VOICE services. Data and network services are not within the scope of this solicitation.

There are approximately 250 Commonwealth agencies and institutions. Many have multiple locations and campuses. DIT does not "own" its own voice network, but instead leases all of its telecommunications services from vendors through statewide contracts or available tariffs. All executive agencies (authorized users) are presently required to use these DIT-administered telecommunications contracts, and the majority of the voice services utilized by authorized users are ordered through and billed by DIT. Commonwealth institutions and local governments are also permitted to acquire services through DIT's statewide contracts. During fiscal year 2002, DIT billed approximately \$39 million in voice services to its state and local government customers. In addition, a portion of the voice services for some state and local government customers are also ordered through and billed directly by the telecommunications vendors utilizing available tariff offerings, primarily because no DIT contracts are available under which to acquire those services. For example, DIT estimates that there are approximately 35,000 business lines that are directly billed by the telecommunications vendors to state and local government entities.

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2. It is the Commonwealth's intent that each executive branch agency (hereinafter, referred to as "Authorized User") be required to execute the services requested in this IFB so that each authorized user can individually avail itself of the services offered under this IFB. In addition, state institutions and local governments may, at their own discretion, also avail themselves of the services offered under this IFB. DIT and the Contractor agree to select three representative authorized user agencies (small, medium and large) at their discretion to serve as pilot audits. At the COV's discretion the results of the pilot audits will be evaluated before the contract is made available for use statewide.

3. As part of resulting contract, the Contractor will be required to review two different Categories of voice facilities and services:

- a. "Category 1"- those voice facilities and services that were ordered through and billed by DIT; and
- b. "Category 2"- those voice facilities and services that were ordered through and billed directly by telecommunications vendors (carriers).

Contractor will be reimbursed by the authorized user agency for any credits that the Contractor obtains for erroneous bills from either DIT or telecommunications vendors, and for a specified amount of future savings that the Contractor identifies and customer implements. Since the Contractor will be interacting with two different types of vendors, there will be a separate procedure to be followed to review facilities in each category.

4. "Category 1" includes those facilities and services billed to authorized users by the Department of Information Technology. These facilities and services include local service, long distance, cellular service, and pager services. The Contractor will deal directly with DIT's Billing office staff to coordinate the resolution of any potential billing issues. The Contractor will obtain from the authorized user the detailed invoice billed by DIT to it; if the authorized user does not have the detailed billing invoice, then the Contractor can request a duplicate copy from DIT.

a. For each "Category 1" facility or service, the Contractor will be required to perform the following tasks:

- (1) The Contractor will physically inventory the facility or service (and related billable features) to ensure that it is operational.
- (2) The Contractor will compare the facility or service physically inventoried to that billed by DIT, and identify any item billed by DIT that was not physically inventoried by the Contractor.

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Paragraph #4, Continued:

- (3) The Contractor will compare the facility or service physically inventoried to that billed by DIT, and identify any item physically inventoried by the Contractor that was not billed by DIT.
 - (4) The Contractor will compare the facility price or service billed by DIT to DIT's master price list, and identify any facility or service that was improperly priced by DIT.
 - (5) The Contractor will only be permitted to verify the price billed for each facility or service to the master price list offered by DIT. Since DIT has an extensive telecommunications audit and reconciliation function that routinely compares the facilities and services billed by vendors to those maintained to DIT, the Contractor will not be granted access to any invoices billed by Vendors to DIT.
 - (6) The Contractor will identify whether the facility or service is obsolete or not in use, and can be disconnected, thereby providing future savings to the authorized user.
 - (7) The Contractor will identify any facility or service that could be legally purchased from an existing DIT contract at a cheaper price, thereby providing future savings to the authorized user.
- b. For each "Category 1" facility or service, the Contractor will be paid a specified percentage of any overpayments made by the authorized user that the Contractor identifies as a result of billing or ordering errors on DIT's part. In addition, the Contractor will be paid by the authorized user for a specified percentage of any future savings (for a specified period of time) that it identifies as a result of the customer disconnecting or modifying its obsolete or unused facility or service. Specifically:
- (1) The Contractor will work with the authorized user to generate the necessary credit request form to DIT for any erroneous billings identified. An authorized user representative, however, must issue the credit request form to DIT.
 - (2) If proven valid, an authorized user credit request will be honored back to the date that the error occurred, but in no instance shall the credit be provided by DIT to an authorized user for a period of more than thirty six (36) months.
 - (3) The Contractor will be paid for any overpayments made by the authorized user as a result of any DIT billing errors after the authorized user has received the requested credits from DIT.

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Paragraph #4, Continued:

- (4) DIT will provide credit to the authorized user for erroneous DIT billings only where amounts have previously been paid by the authorized user to DIT. If the authorized user has short-paid DIT, then the Contractor is not entitled to any payment, since no amounts were erroneously paid by the authorized user to DIT. The authorized user will provide the Contractor with the necessary documentation for the credit in question to show that it short-paid a DIT bill.
- (5) The Contractor shall not be entitled to payment based upon future savings from any credits that the authorized user receives from DIT for erroneous billings.
- (6) DIT will not provide any credit to the authorized user for an obsolete or unused facility where the authorized user never properly issued a service request to terminate or modify that service. The Contractor will be eligible, however, to request payment for future savings for the facility or service after the authorized user takes the necessary steps to disconnect or modify that obsolete or unused facility or service.
- (7) The authorized user will notify the Contractor of any credits that it receives from DIT for erroneous billings and any future savings recommendations that it actually implemented so that the Contractor may present a detailed monthly bill to the authorized user for its compensation due.
- (8) Since DIT has recently initiated a program to review whether authorized users have selected the appropriate pricing plan for each of their Alltel cellular phones billed by DIT, and it is an ongoing process, the Contractor will not be paid for any future savings based upon recommendations regarding Alltel services billed by DIT to its customers.

NOTE: The Contractor shall not receive any revenue from errors which have already been identified and in the process of being reconciled.

5. "Category 2" includes those facilities and services billed to authorized users directly by telecommunications vendors. These facilities and services will include local service, long distance, cellular service, and pager services. The Contractor will coordinate with the authorized user to deal directly with the vendors to resolve any potential billing issues. The Contractor will obtain from the authorized user the detailed invoice billed to it by each vendor; if the authorized user does not have the detailed billing invoice, then the Contractor can coordinate receiving a duplicate copy from the vendor.

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Paragraph #6, Continued:

- a. For each "Category 2" facility or service, the Contractor will be required to perform the following tasks:
 - (1) The Contractor will physically inventory the facility or service (and related billable features) to ensure that it is operational.
 - (2) The Contractor will compare the facility or service physically inventoried to that billed by the vendor, and identify any item billed by the vendor that was not physically inventoried by the Contractor.
 - (3) The Contractor will compare the facility or service physically inventoried to that billed by the vendor, and identify any item physically inventoried by the Contractor that was not billed by vendor.
 - (4) The Contractor will compare the facility or service price to the applicable contract price or applicable tariffs, and identify any facility or service that was improperly priced by the vendor.
 - (5) The Contractor will identify whether the facility or service is obsolete or not in use, and can be disconnected, thereby providing future savings to the authorized user.
 - (6) The Contractor will identify any facility or service that could be legally purchased from an existing DIT contract or prevailing tariff at a cheaper price, thereby providing future savings to the authorized user.
- b. For each "Category 2" facility or service, the Contractor will be paid a specified percentage of any overpayments made by the authorized user that the Contractor identifies as a result of billing or ordering errors on the vendor's part. In addition, the Contractor will be paid by the authorized user a specified percentage of any future savings (for a specified period of time) that it identifies as a result of the authorized user disconnecting or modifying its obsolete or unused facility or service. Specifically:
 - (1) The Contractor will coordinate with the authorized user to generate the necessary credit request form to the vendor for any erroneous billings identified.
 - (2) The Contractor will be paid a percentage of any overpayments made by the authorized user as a result of any vendor billing errors after the authorized user has received the requested credits from the vendor.

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Paragraph #5, Continued:

- (3) If the authorized user has previously short-paid a vendor, then the Contractor is not entitled to any credit, since no amounts were erroneously paid by the authorized user to the vendor. The authorized user will provide the Contractor with the necessary documentation for the credit in question to show that it short-paid a vendor bill.
 - (4) The Contractor shall not be entitled to payments based upon future savings from any credits that the authorized user receives from the vendor for erroneous billings.
 - (5) If the vendor refuses to provide any credit to the authorized user for an obsolete or unused facility or service where the authorized user never properly issued a service request to terminate or modify that facility or service, then the Contractor will be eligible to be paid a percentage of future savings for the facility or service after the authorized user takes the necessary steps to disconnect or modify that obsolete or unused facility or service.
 - (6) The authorized user will notify the Contractor of any credits that it receives from the vendor for erroneous billings and any future savings recommendations that it actually implemented so that the Contractor may present a detailed monthly bill to the authorized user for its compensation due.
6. Award, if made, will be made to the responsive and responsible vendor with the lowest percentage bid for detection of errors. The Bidder will submit only one reimbursement percentage that will be applied to both credits and future savings. For credits the Contractor will be reimbursed at the specified percentage of credits that the authorized user received from DIT and the vendors. For recommendations resulting in future savings, the Contractor will be reimbursed at the specified percentage for three months of future savings after the recommendation has been implemented.
 7. The Commonwealth shall not provide any retainers or "up-front" funds for this solicitation. As previously stated, the Contractor will submit its compensation due after authorized users notify the Contractor that the respective credits have been received from DIT and the vendors, and future savings recommendations have been implemented. Authorized users reserve the right to choose which fiscal year to initiate credits for errors identified by the Contractor.
 8. The term of the contract awarded as the result of this solicitation shall be for two (2) years. The Commonwealth, at its sole discretion, reserves the right to extend the contract, at the percentage quoted or less, for up to three (3) additional one (1) year periods. Should the Commonwealth elect to exercise this option, the Contractor will be notified of the State's decision not less than thirty (30) days prior to the expiration of the initial contract or its subsequent extension period(s).

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9. DIT reserves the right to review the nature of the Contractor's proposed credits and future savings recommendations prior to presentation to the authorized user and DIT will not permit any future savings recommendations to be implemented which are incompatible with the state's overall telecommunications strategic direction. The ultimate decision whether to implement a Contractor's future savings recommendation rests with the authorized user and DIT.
10. Publicity of the proposed credits and future savings recommendations will be the sole responsibility of the affected Commonwealth authorized user. The Contractor shall not announce any proposed credits and future savings recommendations to any media without the express written permission of DIT and the authorized user representative.
11. To ensure that the bidder has the requisite qualifications and experience to provide these services, each bidder shall provide the following as part of this solicitation:
 - a. A list of three customers (including name, company, address, telephone and Fax numbers and e-mail address of contact) for which the bidder has successfully completed work of a similar size and scope to those required by this IFB.
 - b. Detailed resumes of all management, supervisory and key personnel to be assigned to the contract. Resumes should be structured to emphasize relevant qualifications and experience of those individuals in successfully completing contracts of a similar size and scope to those required by this IFB.
12. Contractor shall initiate audit no more than ten (10) business days after audit is scheduled.
13. DIT will issue third party releases to appropriate voice telecommunications Vendors granting contractor access to necessary data.
14. Contractors shall include Excel spreadsheets of projected refunds and savings to DIT.
15. Any questions concerning this solicitation must be submitted, in writing, to the attention of Dave Butler at the address listed in Block #6, page 1, of this solicitation no later than July 3, 2003. Please mark the outside of your envelope "QUESTIONS CONCERNING IFB 2003-034". Written questions may also be submitted via facsimile to (804) 371-5969 or via e-mail to dbutler@dit.state.va.us. After July 1, 2003, the e-mail address will be dave.butler@vita.virginia.gov. No response will be furnished to telephone calls.

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	(RDD) 30 DAYS ARO		

16. The Acquisition Services Division of DIT maintains a web site with a URL of <http://asd.state.va.us>. After July 1, 2003, the new web site will become www.asd.virginia.gov. This web site provides information about ASD and acquisitions conducted by ASD for Information Technology related items. Vendors are invited to check this site regularly.
17. Results of this solicitation will not be given out by telephone. Vendors wishing a copy of the bid results must include a self-addressed, stamped envelope along with their bid. The envelope should be marked with the words "BID RESULTS" and the IFB number. Awards will also be posted to the ASD web site shown above.
18. BIDS WILL NOT BE CONSIDERED IF THE VENDOR IS NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY (DIT). A registration form may be obtained by calling (804) 371-5900 or by contacting the Acquisition Services Division web site, at the above URL. The completed form must be received by DIT not later than the award date in order for the bid to be considered.
19. Bidder's attention is directed to Section 2.b, page S-1, of the Solicitation Instructions concerning the requirement for Federal Identification Numbers (FIN) to be placed on page 1 of the Invitation For Bids. Please place this number in the space provided upper right hand corner of page #1. PLEASE NOTE THAT FAILURE TO PROVIDE THIS NUMBER MAY RESULT IN OUR ABILITY TO VERIFY YOUR REGISTRATION AND YOUR BID BEING RULED NON-RESPONSIVE.
20. Vendors are advised to read and understand paragraphs entitled "Contractor's Report of Sales" and "Industrial Funding Adjustment" (IFA) in the Terms and Conditions. FAILURE TO COMPLY WITH THESE PARAGRAPHS SHALL RENDER THE VENDOR'S BID NON-RESPONSIVE AND SUBJECT THIS AGREEMENT TO TERMINATION AND CANCELLATION.
21. All Vendors are reminded to sign and return Attachment "A" to IFB 2003-034, Certification Regarding Lobbying.
22. Bidders must be registered with the Electronic Virginia procurement solution (eVa) prior to award. Bidders who are not registered with eVa will not be eligible for award. To register, visit <http://www.eva.state.va.us>.
23. Neither DIT or the Authorized User will sign or execute any additional contract, license or other agreements containing contractual terms and conditions as a result of this procurement. Any document signed by persons other than the Contracts Manager, DIT, shall have no validity and the attached terms and conditions shall supercede all such agreements. Bidders should read and understand all of the terms and conditions prior to submission of a bid.

CONTRACTUAL TERMS AND CONDITIONS
INVITATION FOR BID (IFB) #2003-034

1. SCOPE OF CONTRACT

The following paragraphs contain the Contractual terms and conditions by which the Commonwealth of Virginia, hereinafter referred to as "Commonwealth" or "State" or "DIT" (Department of Information Technology), will acquire Services from the Contractor identified in block #9, page 1 of the Solicitation, hereinafter referred to as "the Contractor."

The Virginia General Assembly passed legislation that abolishes the Department of information Technology as of July 1, 2003. All activities and functions of DIT will be consolidated into a new agency that will become the Virginia Information Technologies Agency. Therefore, for the purposes of this Contract ("Agreement") all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

2. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.dgs.state.va.us/dps under "Manuals."

3. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

4. ANTI-DISCRIMINATION

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in a. and b. below apply:

a. During the performance of this Contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for meeting these requirements.

b. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5. ETHICS IN PUBLIC CONTRACTING

By submitting their bids, bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

6. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their bids, bidders certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

7. DEBARMENT STATUS

By submitting their bids, bidders certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

8. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

9. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs

Failure to submit a bid on the official state form provided for that purpose shall be a cause for rejection of the bid. Modification of or additions to any portion of the Invitation for Bids may be cause for rejection of the bid; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a bid as nonresponsive. As a precondition to its acceptance, the Commonwealth may, in its sole discretion, request that the bidder withdraw or modify nonresponsive portions of a bid which do not affect quality, quantity, price, or delivery. No modification of or addition to the provisions of the Contract shall be effective unless reduced to writing and signed by the parties.

10. PAYMENT

a. To Prime Contractor:

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced

charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

b. To Subcontractors:

1) A Contractor awarded a Contract under this solicitation is hereby obligated:

(a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or

(b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

2) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

11. QUALIFICATIONS OF BIDDERS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Commonwealth further reserves the right to reject any bid/proposal if the evidence submitted by, or investigations of, such bidder fails to satisfy the Commonwealth that such bidder is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

12. ASSIGNMENT OF CONTRACT

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

13. CHANGES TO THE CONTRACT

This Contract may be modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by authorized to do so. No modifications to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. For purposes of the Contract, the only authorized representative for the Commonwealth shall be the individual identified in block #14 of this solicitation or his duly designated alternate, and for the Contractor the person identified in block #9 of the solicitation or his/her duly designated alternate.

Any contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

14. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

15. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

16. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a contract over \$30,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site (www.eva.state.va.us) for a minimum of 10 days.

17. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

18. NONDISCRIMINATION OF CONTRACTORS

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

19. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

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b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

eVA BUSINESS-TO-GOVERNMENT CONTRACTS

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from www.eva.state.va.us. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

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b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from www.eva.state.va.us.

20. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this

Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

21. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by the Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;

22. SERVICE COMMENCEMENT DATES

- a. The Contractor shall deliver/install the requested Services ready for use, by the installation date (day, month, year) identified as the required delivery date (RDD) in the Schedule, or as identified on any Order or Attachment.

- b. Any amendment by the State to this Contract or any part thereof, may require the establishment of a new mutually agreed to required delivery date. The State may delay the installation date by notifying the Contractor at least ten (10) days before the required installation date.

- c. If the Services are not delivered within the time specified in the Schedule, the State reserves the right to cancel the award of this Contract and/or terminate this Contract for default without further obligation, and award the solicitation to the next responsive and responsible bidder. Contractors are cautioned that failure to deliver/install the proposed Services as stated in response to a solicitation document may result in removal from DIT's Vendor Registration File as per Section 7.20 of the Division of Purchases and Supply's Vendor's Manual dated December 1998.

- d. Neither the Contractor nor the State shall be responsible for delays resulting from acts beyond the control of each party. These include, but are not limited to, acts of God, riots, acts of war, fire, earthquakes, epidemics, or disasters.

23. NON-APPROPRIATION

All funds for payment of Services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

24. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered to be a substantive part of this Contract.

25. ENTIRE AGREEMENT

This Contract, the solicitation, bid response, solicitation instructions and all Services specifically listed in the Schedule, and the notes in the Schedule constitute the entire agreement between the parties with respect to the subject matter of this Contract. All prior agreements, representations, statements, negotiations and undertakings are hereby superseded with respect to Services acquired by the State under the terms and conditions of this Contract.

Notwithstanding Orders processed by Authorized Users, no other written documents regardless of form or content shall be executed by any agency or institution for Services acquired under this Contract unless signed by the Contracts Manager, DIT, or his alternate as designated by the Director, DIT.

26. PRICE PROTECTION/ADJUSTMENTS

The State will not pay any additional costs above those costs provided for in the Schedule identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

27. TERM

The initial Term of this Contract shall be from the date of award and continuing for 2 years. At the sole discretion of the Commonwealth, the Contract may be extended for three additional one year periods. For any such extension, the Commonwealth will issue a writing at least 30 days prior to the end of the then current Term.

28. INVENTIONS AND COPYRIGHTS

The Contractor is prohibited from copyrighting any papers, reports, forms or other materials, and from obtaining any patent on any invention or other discovery resulting solely from its performance under the terms and conditions of this Contract.

29. CONTRACTUAL RECORDS

All Contractual books, records and other documents related to matters under this Contract shall be made available by Contractor to the State and its designated agents for a period of five (5) years after final payment for purposes of audit and examination.

Contractual records are hereby further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

30. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

31. TERMINATION AND CANCELLATION

The Commonwealth shall have the unilateral right to terminate this Contract for Default, in the event that any one or more of the following events of default occur or continue during the term of this agreement, (a) the vendor shall fail to deliver the Services required by this Contract or (b) the vendor shall breach any of the other terms set forth within this agreement or (c) the vendor shall fail to cure any breach after receiving a "Show Cause Notice" identifying the failure, and providing the vendor ten (10) days to cure the failure/nonperformance. If the vendor fails to answer the cure notice, or does not correct the deficiencies noted, the State may immediately terminate the agreement for Default.

In such event, the Commonwealth will only be liable for cost incurred to the date of termination.

The Commonwealth's failure to exercise its right to terminate for default under this provision shall not be construed as a waiver of its right to terminate, rescind or revoke this Contract in the event of any subsequent breach of any provisions of this agreement.

32. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

33. COMPLIANCE WITH FEDERAL LOBBYING ACT

a. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

b. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

c. A representative of Contractor shall sign the certification attached as Attachment "A" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this

Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

34. CONTRACTOR'S REPORT OF SALES

The Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

35. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DIT that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within 30 calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

36. TERMINATION FOR CONVENIENCE

This Contract may be terminated, in whole or in part, upon sixty (60) days advance written notice by the Commonwealth of Virginia. There are no additional costs or financial obligations to the Commonwealth upon termination for convenience.

37. TERMINATION FOR CONVENIENCE OF INDIVIDUAL ORDER

Any individual Order placed under this Agreement may be terminated, in whole or in part, by an Authorized User for its convenience, at any time up to sixty (60) days advance written notice to the Contractor. There are no other costs or obligations for termination for convenience.

38. PROPRIETARY INFORMATION, DUPLICATION AND DISCLOSURE

The Contractor agrees that all software installed and utilized on Contractor's Assets contains information proprietary to the Commonwealth of Virginia and other third party software vendors and that disclosure of such information could cause irreparable damage to the Commonwealth of Virginia and its citizens. Therefore, Contractor agrees to hold all information and or software disclosed through operation of this Agreement in strict confidence, as required by this Section and use such information only in performance of this Agreement. No information or software utilized by the Commonwealth while at Contractor's facilities shall be duplicated or furnished to others without the prior written consent of DIT.

Contractor acknowledges that in the course of performing services hereunder its personnel and subcontractors (if any) will have access to confidential information about COV's business, operations, employees, customers. Contractor agrees that, except as directed by COV, Contractor its employees and its subcontractors shall not at any time during or after the term of this Agreement (a) disclose any Confidential Information to any third party, (b) permit any third party to examine and/or make copies of any reports, documents or electronic data containing Confidential Information (whether they are prepared by Contractor or come into Contractor's possession or under Contractor's control by reason of Contractor's services) or (c) use any Confidential Information for any reason other than in the performance of services hereunder. Upon termination of this Agreement, Contractor shall return to COV or at COV's request destroy, all reports, documents, electronic data and other matter in Contractor's possession or under Contractor's control that contain or relate to Confidential Information. Contractor may disclose Confidential Information to such of its personnel as have a need therefor in the performance of their duties for COV, provided, however, that Contractor shall inform all such personnel of their confidentiality obligations hereunder and shall use its absolute best efforts to ensure their compliance therewith. Contractor shall not be required to treat as confidential any information which:

- (a) contractor can demonstrate was in its possession prior to execution of this Agreement
- (b) has become generally available in the public domain without breach of this Agreement
- (c) becomes lawfully available to Contractor from a source other than the Commonwealth

ANY RELEASE OF PROPRIETARY OR CONFIDENTIAL INFORMATION BY THE CONTRACTOR OR CONTRACTOR'S EMPLOYEES SHALL BE CONSIDERED A BREACH OF THIS AGREEMENT. THE CONTRACTOR SHALL NOT USE THE CONFIDENTIAL INFORMATION OF THE COMMONWEALTH FOR ITS OWN BENEFIT OR FOR THE BENEFIT OF ANY THIRD PARTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT IN PERPETUITY.

39. CONTRACTOR ACCESS TO COMMONWEALTH LOCATION/S

Commonwealth shall grant to Contractor personnel such access to the Commonwealth location as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Commonwealth location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Commonwealth location, be required to undertake the execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

40. ORDERS

Authorized ordering officials representing the "Authorized Users" of this Contract may order Services from this Contract by any of the following Order methods, and the Contractor is required to accept any Order from A, and B, and C as shown below.

- A. eVA: An order placed through the eVA electronic procurement website portal <http://www.eva.state.va.us>
- B. Purchase Order (PO): An official PO form issued by an Authorized User.
- C. Delivery Order (DO): A DO issued by the Acquisition Services Division, DIT.

This ordering authority is limited to issuing Orders for Services that is available only under this Agreement. Notwithstanding the section herein, entitled Modifications, no Authorized User or other public body of the Commonwealth shall have the authority to modify this Contract.

41. CONTRACT DOCUMENTS

Nothing contained in this Contract is considered Proprietary or Confidential or containing trade secrets as determined by the Contractor. All Contractor provided quotes and other information, in response to DIT's request in the performance of this Contract, shall not contain any proprietary or Confidential information. The Contractor hereby irrevocably withdraws any claim that any future

document provided to in response to actions under this Contract, should be treated as proprietary, confidential or contain trade secret information.

All Contractor documents and information provided in response to DIT's request under the performance of this Contract, as well as all documents now or later comprising the Contract may be released in their entirety under the Virginia Freedom of Information Act, and Contractor agrees that any confidentiality or similar stamps or legends that are attached to any future documents or information may be ignored to the extent they claim confidentiality beyond that permitted herein.

ATTACHMENT "A"

TO

IFB 2003-034

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

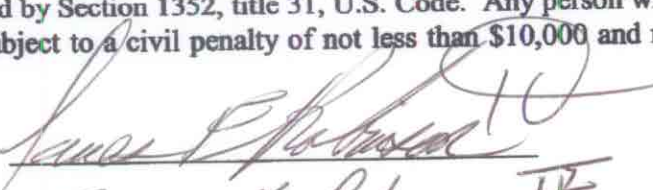
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature:

Printed Name:

Organization:

Date:


JAMES E. ROBINSON
ASYNCROB & ASSOCIATES
July 8, 2003